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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

United States of America,  
  
Plaintiff,  
  
vs.  
  
David Allen Harbour,  
  
Defendant.

No. CR-19-00898-001-PHX-DLR

**UNITED STATES' OPPOSITION TO  
DEFENDANT'S MOTION FOR LEAVE  
TO FILE EXCESS PAGES FOR  
DEFENDANT'S RENEWED RULE 29  
MOTION**

**(Doc. 712)**

For two essential reasons, the Court should deny Defendant's motion for leave to file an overlength reply to the United States' response for judgment of acquittal pursuant to Rule ("Rule 29 Motion") that he lodged on May 5, 2023. The lodged Reply contains excess pages that rehash matters that are thoroughly covered in the first overlength Rule 29 Motion. (Doc. 649). Defendant never sought leave to file an overlength pleading in that instance (23 pages), and an overlength reply on a renewed motion covering issues already litigated is unnecessary. In addition, Defendant has failed to demonstrate good cause to file an oversize reply.

*First*, Defendant's Renewed Rule 29 Motion (Doc. 699) and several previously-filed motions or other pleadings in this case (including the first Rule 29 Motion) restates

1 or repeats Defendant's arguments that have already been briefed or ruled-upon. (*Compare*  
2 Doc. 649 (e.g., addressing alleged variances in proof and sufficiency of evidence), *with*  
3 Doc. 699 (seeking to relitigate previously-decided issues). Defendant's initial Rule 29  
4 Motion was denied. (Doc. 671). Parties ordinarily are not allowed to re-file previously  
5 filed court documents or seek reconsideration unless the court misapprehended the facts or  
6 there has been a change in the law. *See* LRCiv 7.1(d)(1) & (2).<sup>1</sup> Neither have occurred in  
7 this case. Defendant's request to file excess pages in the form of a reply that repeat much  
8 of what Defendant has argued in separate briefs should be denied.

9 *Second*, a reply is limited to 11 pages unless good cause is shown. *See* LRCiv.2(e).  
10 His original Rule 29 Motion was 23 pages, the government's response was 16 pages, and  
11 the reply was 13 pages. (Docs. 649, 659 and 665). Defendant filed a renewed motion  
12 recycling the same issues, that were denied in the first motion. His renewed Rule 29  
13 Motion was 19 pages, the government's response was 16 pages and now he is seeking to  
14 exceed the number of pages in his renewed motion. (Doc. 699). Defendant provides as a  
15 reason for an overlength Reply as, "the good cause is that the month-long trial after a 2 ¾  
16 year case involving three superseding indictments and a greater than usual number of  
17 pretrial motions generated a lot of issues that extended into the trial." (Mot at 1.) But again,  
18 these issues that "extended into trial" have already been thoroughly litigated—some  
19 multiple times. In sum, in addition to repeating arguments already ruled upon, Defendant

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25 <sup>1</sup> "Grounds warranting a motion to reconsider include (1) an intervening change in the  
26 controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear  
27 error or prevent manifest injustice." *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012  
28 (10th Cir. 2000).

1 has failed to show good cause; therefore, his request should be denied.

2 Respectfully submitted this 15th day of May, 2023.

3 GARY M. RESTAINO  
4 United States Attorney  
5 District of Arizona

6 s/Kevin M. Rapp  
7 KEVIN M. RAPP  
8 COLEEN P. SCHOCH  
9 Assistant U.S. Attorneys

10 **CERTIFICATE OF SERVICE**

11 I hereby certify that on this same date, I electronically transmitted the attached  
12 document to the Clerk's Office using the CM/ECF System for filing a copy to the following  
13 CM/ECF registrants:

14 Stephen M. Dichter  
15 Justin R. Vanderveer  
16 *Attorneys for Defendant*

17 s/L. Elias  
18 U.S. Attorney's Office